The Growbusters Initiative

A Review of Police Conduct, Policy and Procedures

Prepared for the Police Complaint Commissioner
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Introduction

I have been asked by Police Complaint Commissioner Don Morrison to review the police conduct, policy and procedures as they relate to the Vancouver Police Department Growbusters initiative. A number of articles in the media raised concerns regarding the initiative. Specifically it would appear that the issues are:

(a) seizure and destruction of property

(b) entry of premises

(c) lack of charges stemming from searches

(d) interdepartmental communications between the Growbusters and the Vancouver Police Department Drug Squad

(e) safety of officers

(f) environmental concerns.

I reviewed the media articles and documentation supplied to me by the Vancouver Police Department. Interviews were conducted with members of the Growbusters Squad, the Drug Squad, Federal Crown Counsel and City of Vancouver legal staff. In addition, informal conversations were held with various members of the Vancouver Police Department to ascertain how rank and file members received the initiative. Legal opinions, relevant statutes and other documents were also reviewed.

1. Executive Summary

The Growbusters team is a compilation of police, fire department, municipal and B.C. Hydro employees who came together in 1999 to address a community concern. Residents of the Collingwood area in Vancouver were frustrated with the lack of police response to the proliferation of marihuana grow operations in their neighborhood. Citing concerns about safety, environmental hazards, and organized crime, they asked their community police office members to take action to remove this perceived hazard from the neighborhood. The response was the formation of the Growbusters team.

Based on discussions with the community, the original mandate of the Growbusters team was to shut down marihuana grow operations in Collingwood. This was initially accomplished solely through search and seizure or deactivation of equipment used in cultivation, although currently charges are also laid where officers feel it is appropriate. This is one example of the procedural changes undertaken in response to concerns raised by other members of the Vancouver Police Department. A number of other changes were also made by the Growbusters team to address legal concerns. The Growbusters now operate in conjunction with the Vancouver Police Department Drug Squad, and their activities are expanding beyond the Collingwood neighborhood.

This review found no evidence to indicate Vancouver Police Department officers or other members of the Growbusters team knowingly violated any federal or provincial acts or statutes. Nor were any of the actions of the Growbusters team inconsistent with existing case law. In instances where potential violations were identified, the team immediately changed its operating procedures to address those concerns.

Several recommendations are put forward to the Chief Constable of the Vancouver Police Department.

2. Background

Up until the last few years, indoor marihuana grow operations were considered a rarity. With the advent of hydroponics, intense lighting, recognition by organized crime of the profit potential and an insatiable world market for high potency British Columbia marihuana, grow operations have proliferated.

There are 600,000 citizens in the City of Vancouver. The Vancouver Police Department estimates that there are 4,000 to 7,000 grow operations. Other agencies such as B.C. Hydro that have access to electrical load surveys believe that the figure is higher, between 10,000 to 15,000.

While police resources have historically focussed on investigations and prosecutions, the list of tips of suspected and known grow houses has grown exponentially. In addition, the sophistication of those setting up the grow operations has increased. Each segment of the operations, from cutting the power, wiring the house, setting up the lights and reflectors to planting, is now specialized. The facilitator of each segment is paid individually and is kept separate from the others. In many cases, once the operation is up and running, a guard family is installed to give a semblance of normality to the house as well as to ensure that no one steals the crop.

There is a perception on the part of many people that grow operations are small gardening projects where marihuana is cultivated and harvested for personal use. Nothing could be further from the truth. The sophistication of these operations allows continuous cropping of the plants, which results in revenues of many hundreds of thousands of dollars per residence. The criminal element in society uses the proceeds from these marihuana grow operations to further other illegal and often violent criminal operations.

Marihuana grow operations require huge amounts of electricity to run the lights, fans, and other equipment. This means that in most cases, the operators cut into the power supply to bypass the meter and then use transformers to step the power down. This method of obtaining power inevitably leads to the danger of fire. The need for power also means that

the stoves in the majority of these houses are disconnected and the 220-volt power supply is used for the grow operation. Cooking is therefore done on portable propane stoves. The propane bottles themselves pose a large potential explosive hazard. In some houses there has been evidence that fires had broken out and in one case reached the propane bottle. From a fire and electrical standpoint, these houses are quite literally time bombs.

The process of cultivation means that noxious gases and particulates are released into the environment. These gases, mainly carbon monoxide and carbon dioxide, also permeate the residences. Those persons tasked with "guarding the crop" often have children. These people live in the residential portion of the house and are continually subject to these gases. This poses a significant health problem. Chemicals and fertilizers are used to ensure a robust crop. This contributes to not only the respiratory danger but also the fire danger through co-mingling of the substances.

Most marihuana grow operations are large commercial enterprises operated by organized crime groups. As a result, they become subject to many other criminal activities including break ins, home invasions, assaults and homicide. It must be understood that the majority of these operations are well organized and part of the criminal underworld. A single well-run operation can easily produce hundreds of thousands of dollars of product. As a result, they are targets for rival operators. In some cases, rivals intent on entering a grow operation have inadvertently entered the wrong house, resulting in terror for innocent citizens.

3. Investigation and Review

In 1999, residents of the Collingwood area of Vancouver approached the community police program with a concern about the proliferation of marihuana grow operations in their neighborhood. The community residents were upset and concerned about these operations. Many of these locations were previously reported to the police but due to operational commitments not all tips were acted upon. In the mind of the community residents, no action was taken to alleviate the problem. The community police office liaised with uniformed officers of District #3. It was determined that the major issues with the grow operations centered on safety of the community rather than the legality or morality of growing marihuana. The grow operations were considered dangerous and a nuisance by the citizens.

While the optimum result of any investigation is criminal charges, the community was more concerned with eliminating a dangerous nuisance. Criminal charges do not guarantee that those responsible for the uncovered grow operation will not return and re-establish in the same residence. As a result, uniformed members of District Three decided that a multi-disciplinary approach would be taken to this problem. In late 1999, a team of uniformed Vancouver Police Department members from District Three, the Vancouver Fire Department, personnel from the Permits and Licenses and Electrical Inspections departments of the City of Vancouver, and British Columbia Hydro met to formulate a protocol. It was decided that a Growbusters team composed of representatives from all of these departments would be formed.

Initially, the team gained entry to a premise under *The Fire Services Act*. This provincial statute gives fire services personnel throughout the province the ability to enter and investigate hazardous premises. Seven entries were made under this Act. Accompanied by fire officials, the Growbusters would enter and seize the marihuana. The fire officials would deal with hazardous materials and noxious substances, the electrical inspectors would disconnect the electrical supply and render the equipment safe and B.C. Hydro staff would disconnect the power supply and lock off the meters.

After the initial seven entries, legal counsel from the City of Vancouver advised the Growbusters that while the entry was legal under this statute, there were no provisions for seizure of property. As a result no more entries were made under *The Fire Services Act.* All subsequent entries were executed via warrants obtained from Justices of Peace in the usual manner. Over the ensuing months, the Growbusters team laid no charges, although there were instances when people were found in the residences.

During this period friction developed between members of the Growbusters team and the Vancouver Police Department Drug Squad. There were philosophical differences between the two groups. In October 2000, a meeting was held between the Drug Squad and the Growbusters. It was decided that the two groups would join and share intelligence and resources. They developed a coordinated response to deal with the large number of commercial marihuana grow operations in the city. It is important to note however, that the following was included in the memo outlining their assignments:

> *"The decision to call Drug Squad to the scene will be made by the Growbusters' Supervisor who will consider all factors, including public interest. There is no suggestion that the Supervisor be restricted in the flexibility of response. These are guidelines, made in concert by both squads, which serve to define our interaction."*

Since October 2000, the Growbusters have worked out of the Drug Squad office with an assigned team of Drug Squad officers. From my interviews it would appear that a good working relationship has developed between the two groups. The Growbusters and the Drug Squad are now conducting searches not only in the Collingwood area but city wide with excellent results.

4. Issues

(a) Seizure and destruction of property

The media reports refer to memos written to senior officers of the Vancouver Police Department which describe the destruction of property. This memo was given to the media as a result of a Freedom of Information (FOI) request.

> *'The Police Members and City electrical personnel then disabled virtually any equipment used for the growing of the marihuana including light pots, fans, furnace fans, water pumps, shrouds, wires, cords, ionizers and timers. City electrical personnel used a hammer to smash the industrial ballasts to make them inoperable...I can find no authorization for Police Members or a person named by the Police officers on a valid warrant to destroy property even if it is property used to produce an illegal substance...I discussed this with Cst. *****. He stated that the City electrical technicians were "making the equipment safe." In reality unplugging the power and waiting 20 minutes makes all the equipment in a grow operation "safe."'*

The issues at question here are the powers of police officers and City of Vancouver electrical inspectors at grow operations. It is the opinion of the writer of the memo that "unplugging the power and waiting 20 minutes makes all of the equipment in a grow operation "safe." It could be argued that the question of making equipment safe is not a police function, but rather that of the electrical experts on the Growbusters team. Both the City of Vancouver electrical inspectors as well as personnel from Hydro are the people tasked with turning off the power and making the grow equipment safe. To address these questions, two legal opinions were obtained, one dealing with the police powers and one regarding the powers of the electrical inspectors.

The leading case on the issue of destroying equipment and cutting electrical power is the recent judgment of the British Columbia Court of Appeal in *R. v Kennedy, (2000) B.C.J. No. 1167.* The relevant facts are described as follows:

> *"Due to the electrical system bypass, an electrician was called to disconnect the power and dismantle electrical components in order that the grow operation could be dismantled without anyone being electrocuted.*
>
> .....

The police took photographs of the grow operation, seized the marihuana plants and removed them from the residence. They then dismantled the grow operation without any damage to the structure of the residence.

Much of the grow operation equipment was destroyed by the police as follows:

a) growing light bulbs were smashed into a garbage bucket

b) lamp shrouds were bent in half

c) silver reflective material covering the walls was cut up with an exacto knife

d) the nutrient pipes running to the marihuana beds were broken

e) the wires on timing devices were clipped

f) the wires on the ballast and capacitors were clipped; and

g) wires on pumps were cut

The officers testified that this "dismantling" procedure was carried out in accordance with a policy then in force whereby grow operation equipment would be rendered inoperable rather than removed. This was done to prevent the use of the equipment in another grow operation (paras. 8-12)."

The Court of Appeal rejected the argument that the evidence should be excluded under s. 24(2) of the *Charter of Rights and Freedoms*, based on the manner of the search. The Court went on to say:

"The trial judge held that the police were acting in good faith in the manner in which they destroyed the hydroponic equipment. There was no evidence of malice or the wanton destruction alleged by the appellant. The dismantling was orderly, some of it done by an independent electrician.

The better procedure of course would have been for the officers to follow s. 11(8) of the Controlled Drugs and Substances Act which provides authority in the execution of a search warrant to seize, "any thing that the peace officer believes on reasonable grounds has been obtained by or used in the commission of an offence or that will afford evidence in respect of an offence."

The evidence further disclosed that this conduct although originally thought to be justified on the basis that it was permissible in that there was no place to store such equipment has now been abandoned and will not occur in future cases.

I am of the opinion that the seriousness of the violation was not great particularly in light of the uncontradicted evidence, which disclosed that the hydroponic equipment was being used in the commission of an offence (paras. 36-39)."

The Court of Appeal in *Kennedy* did note that;

"... the remedy of this appellant in regards to the destruction of the equipment is in the civil courts rather than under the Charter" (para. 41), leaving open the possibility that an ambitious grow operator could commence formal civil proceedings against the police."

It was the opinion of the legal counsel writing this opinion that in his view such an action would not have a high likelihood of success. It is clear from this decision that the police have the power to seize the equipment under the *Controlled Drugs and Substances Act*.

It is true that the equipment found in the grow operations is cumbersome and bulky. In cases where the equipment is portable, i.e. fans, and other objects that can be unplugged, the equipment along with the marihuana is seized by the police and made the subject of an exhibit report. The marihuana is burned and the equipment is destroyed in a timely manner. It was reported to this review that no one has ever claimed the equipment seized by police.

Where the equipment found in the grow operations is fixed, i.e. ballasts and timers, it is made safe and inoperable by City of Vancouver electrical inspectors. Any other equipment that is fixed in place and considered unsafe is also made inoperable. A legal opinion was obtained outlining the role and powers of the City of Vancouver electrical inspectors in this process. In summary, the opinion states:

> *"As part of the Growbusters Project, electrical inspectors enter the premises after police have entered pursuant to a warrant. Any equipment in the premises that is CSA or ULC approved and portable such as extension cords, plug-in fans, timers and other devises are unplugged and seized by the police. However, there is certain equipment found routinely in marihuana grow operations which is not easily portable and can pose a significant electrical/fire hazard. This equipment falls into two types, electrical boards and ballasts. Electrical boards have timers wired into the board and connected to each other to regulate heat, light and water flow. Apparently, the wiring of the connections is done incorrectly in an unsafe manner by amateurs. As well, many of the timers are not CSA or ULC approved and their use is therefore prohibited in British Columbia.*
>
> *The electrical inspector will typically cut the wires connecting the timers and leave the board in the grow-op. Given my review of the relevant legislation, I do not see any problems with this procedure.*
>
> *Problems arise with the second category of electrical equipment, something called ballasts. Ballasts consist of heavy metal canisters or capsules, which have electrical circuits at both ends. Inside the ballast, a magnetic field is created which transforms the voltage and wattage of the electrical current, taking typical domestic electrical current and transforming it into current which creates a great deal of heat. This is a significant electrical/fire safety hazard. The ballasts are homemade by amateurs and consist of various parts, some of which are CSA approved and some of which are not, cobbled together.*
>
> *When electrical inspectors encounter these ballasts (there are roughly 10 per grow op of a value of $200 to $250 each), the ballasts are disconnected from the electrical current by clipping the electrical wires. The problem is the ballasts can still be re-used, simply by reconnecting them to electrical wiring. The ballast itself is illegal and dangerous from a fire safety/electrical standpoint. Accordingly, the electrical inspectors drill a hole through the metal plates in the ballasts. This apparently makes it impossible to re-use the ballasts. Once the ballasts are drilled, they are left in the grow operation and are not seized by the police....*
>
> *Electrical inspectors have the power to order the owner of a dangerous piece of electrical equipment to alter it. In the case of grow-operations, the inspectors do not know who the owner of the equipment is and are reluctant to leave a potentially hazardous piece of equipment in a grow-operation because of the concern it may be re-used...."*

The relevant powers of the electrical inspectors are:

Electrical By-Law No. 5563

Section 6.4

If electrical equipment is for any reason defective, unsafe or hazardous, the City Electrician may disconnect the equipment or by notice in writing to the owner or occupant of the premises where such equipment is installed or used may order that:

(a) the use of the premises or the use of the equipment be discontinued;

(b) the equipment be immediately disconnected or disconnected and removed from the premise;

(c) the equipment be altered or repaired as directed by the City Electrician;

(d) the manner of using the equipment be altered as directed by the City Electrician;

And may impose a time limit with respect to the order.

.....

Canadian Electrical Code

Section 2-3000 General Requirements for Maintenance and Operation:

(1) all operating electrical equipment shall be kept safe and proper working condition and

(4) defective equipment shall either be put in good order or permanently disconnected

The actions of the police and other personnel attached to the Growbusters team appears to be covered by a variety of federal, provincial and municipal statues.

One of the media articles refers to a search conducted by the Vancouver Police Department. In it, the statement is made:

> *"A landlord has accused the Vancouver Police of destroying property during a raid on his tenant's marijuana growing operation earlier this year – months after police say the practice was halted."*

The article contains pictures of dismantled electrical cable, a folded reflector as well as a fan. The pictures accurately depict a residence after a search has been conducted. Since the person interviewed in the article was the landlord and not the person who owned the property, it is difficult to say what condition the premises were in prior to the search. The owner is quoted in the article as saying:

> *"They left a big mess. I think they should have taken [the equipment} with them for evidence but they didn't...I don't think it's fair that they just came in here and left a mess behind. If it's evidence, they should take it with them."*

The issue seems to be the mess of the premise rather than the destruction of any equipment. Police are not tasked with cleaning up after their searches. The proper person to clean up after an event such as this is the tenant who rented the premise or the use of a damage deposit to clean up.

Recommendation:

To: The Chief Constable, Vancouver Police Department

That meetings be held with all of the personnel involved with the Growbusters initiative to ensure that all seizures and destruction of property are recorded and are covered by all relevant statutes.

4. Issues (continued)

(b) Entry of Premises

The first seven entries made in 1999 by the Growbusters team were executed under relevant sections of two pieces of legislation. The first Act is a provincial statute called the *Fire Services Act.* The relevant section pertaining to entry of private dwellings is Section 23 of the Act. It states:

> *"...a local assistant may in the municipality of British Columbia for which he or she is a local assistant, exercise the powers conferred by section 21 and 22 and, with written approval of the fire commissioner, the powers conferred by section 23."*

This statute deals with the powers of fire personnel to enter premises. The second provincial statute is *Electrical Safety Act, RSBC 1996, C. 109: It* states:

> *"An inspector may do any or all of the following:*
>
> *(a) enter any premises at any reasonable time for the purpose of inspecting the electrical equipment kept or used there;*
>
> *(b) inspect and examine all electrical equipment found by the inspector on any premises;*
>
> *(c) require any electrical equipment that is being inspected to be put in motion or operation, or stopped, for the purpose of its examination by the inspector;*
>
> *(d) require the production before the inspector of all plans and specifications, or further plans and specifications, as the inspector considers necessary for the inspection or examination of electrical equipment or plans and specifications that are being inspected or examined by him or her;*
>
> *(e) require the attendance before the inspector of all persons he or she thinks fit to summon and examine, and require answers or returns to be made to all inquiries he or she thinks fit to make any person for any inspection or examination under this Act."*

At this point in the evolution of the Growbusters initiative, police personnel were dealing with what they considered a dangerous hazard to the community. No criminal charges were ever laid in these searches, however property was

seized and made inoperable. While the fire personnel along with the City of Vancouver electrical inspectors have the powers to do this, there are no seizure provisions allowing the police to seize or destroy property. This review was advised that as soon the City of Vancouver legal counsel advised the Growbusters team of this fact, no more searches were conducted under the provincial statutes. This issue was resolved approximately one and a half years ago.

No Recommendations

4. Issues (continued)

(c) Lack of charges stemming from the searches

A member of the Drug Squad expresses concern regarding the charging procedures of the Growbusters team. This memo was written in August 2000 and was also contained in the FOI package. In it the member states:

> *" At the moment, the perception that the general public has is that the police are doing a great job. When the police show up to get rid of the problem in their neighbourhood that person is going to jail. This is a common perception. I think they would be appalled to know different."*

The information that this review received tends to indicate that the Collingwood community was in fact extremely happy with the solution to this dangerous problem. There is evidence that a number of tips were sent to the police department regarding possible grow operations but for various reasons, no searches were conducted. The citizens appear to have been more concerned about removing a dangerous situation from their neighbourhood than actual charges. While it is true that for a period of time at the outset of the Growbuster initiative no charges were laid, this procedure changed shortly after the above noted memo was written. Currently 17 per cent of all searches result in charges. While this figure may seem low, it was reported that a charge rate of between five to 10 per cent would normally be expected.

A legal opinion was obtained regarding case law governing police use of discretion as well as the application of the law pertaining to the present circumstances. This opinions states:

> *"It is clear that police officers enjoy a wide measure of discretion in discharging their duty to enforce the law.*
>
> *The law in this regard is not new. In 1969, for example, the Canadian Committee on Corrections stated as follows in its Report: "[d]iscretion in the application of the criminal law should be allowed at each step in the process: arrest, prosecution, conviction, sentence and corrections" (p. 16). The following three cases set out the broad general approach courts of law have taken respecting the exercise of police discretion.*
>
> *The leading recent judicial decision in this regard is the judgement of the Supreme Court of Canada in R. v. Beare, [1988] 2 S.C.R. 387, which contains the following statements:*
>
> *Discretion is an essential feature of the criminal justice system. A system that attempted to eliminate discretion would be unworkably complex and rigid. Police necessarily exercise discretion in deciding when to lay charges, to arrest and to conduct incidental searches, as prosecutors do in deciding whether or not to withdraw a charge, enter a stay, consent to an adjournment, proceed by way of indictment or*

summary conviction, launch an appeal and so on.

The Criminal Code provides no guidelines for the exercise of discretion in any of these areas. The day to day operation of law enforcement and the criminal justice system nonetheless depends upon the exercise of that discretion.

This court has already recognized that the existence of prosecutorial discretion does not offend the principles of fundamental justice....The Court did add that if, in a particular case, it was established that a discretion was exercised for improper or arbitrary motives, a remedy under s. 24 of the Charter would lie, but no allegation of this kind has been made in the present case. (pp.401-11)

The case of R. v. Blackplume (1990), 56 C.C.C. (3d) 563 (Alta. Q.B.), offers a further illustration of the law governing police discretion. Here, police officers had two choices under Alberta liquor legislation: they could arrest an individual for being intoxicated in a public place and incarcerate the person until he or she became sober, or they could lay a formal charge which could lead to a fine or a term of imprisonment. The court relied on the Beare case in rejecting the argument raised by the accused that this discretion was a deprivation of liberty and therefore violated s. 7 of the Charter of Rights and Freedoms.

Beare was also applied in a recent case in which the owner of a record store faced criminal charges for selling drug paraphernalia. Among other things, he objected to the fact that others were engaged in the same activity. The court rejected this argument:

I am not troubled by the fact that the accused was charged when other stores may have been selling similar items. The exercise of discretion by police officers in the laying of criminal charges is not a revolutionary concept to criminal law. The Supreme Court of Canada recognized and approved such discretion in R. v Beare....(R. v. Spindloe, [1999] S.J. No. 544 at para .35 (QL)(QB))

Ultimately, the question in this matter is (using words from Beare) whether "discretion was exercised for improper or arbitrary motives.

The present circumstances are somewhat novel, since most judicial decisions dealing with a police officer's discretion to arrest or recommend a charge involve an allegation that the police officer should not have taken particular enforcement action. Here, the question is whether a police officer acts properly by failing to take particular action."

The question can be broken down into three situations. First, police officers are trained to recognize situations where after executing a search warrant they do not have reasonable grounds to arrest or recommend that Crown approve formal criminal charges. It is readily apparent to the officer in charge that even if more resources were expended on a continuing investigation, the likelihood of charges being laid are slight. The legal opinion obtained goes further:

"In such cases, police cannot be criticized for closing the file. However, it is essential, in our opinion, that investigating officers ensure that they briefly record the reasons why they conclude that no further investigation is appropriate concerning a particular file. Recording such assessments will provide considerable protection in the event anyone formally questions the exercise of discretion in a particular case."

Second, it is possible that if further investigation is conducted, there is a possibility of recommending that Crown approve formal criminal charges. Again however, there is considerable latitude for discretion. In common law, it is the duty of the police to enforce the law. This does not mean however that a police office is expected to enforce all laws or respond equally to all offences. The police community frequently faces decisions regarding the allocation of limited

fiscal and human resources. Competing priorities must be weighed and decisions made. A police officer is entitled to decide that other demands for police response preclude an exhaustive criminal investigation in a particular situation.

The third situation is where the police officer has grounds to recommend the laying of a charge or could establish grounds with a minimal of investigative effort. The question is whether there is a place for discretion in this instance, and is there case law to support a decision of not recommending a charge. The legal opinion stated:

> *"Even where a police officer has reasonable grounds, some room for discretion remains. The Alberta Law Enforcement Review Board recently summarized the law in this regard in the course of dismissing a complaint that a police officer failed to discharge his duty to enforce the law by declining to lay a criminal charge after an assault:*
>
> *[I]f an officer is satisfied that grounds are present to charge he/she may exercise officer discretion to lay such charges as are warranted. An officer may also be satisfied that grounds to charge are present, but for bona fide reasons no charges will be laid. In this respect a police officer exercises a wide authority and is entitled to consider alternative to charging when such alternatives serve the public interest and those of good order. In this context an officer who declines to lay charges when grounds are present, is not in violation of [the] duty to enforce the law (see, R. v. Beare...). It is clear, however, that the seriousness of an incident is a relevant consideration in the context of charging. The more serious the matter the less room there exists to exercise discretion. By way of example, a very trivial shoplifting permits far more opportunity for the application of discretion than an armed robbery with violence. [Rolls v. Matsune (1998), 7 A.L.E.R.B.J. 190, at 199-200]*
>
> *It is our opinion that police officers should not use the search warrant process intending never to make an arrest or recommend that the Crown approve criminal charges.... If formal criminal charges had never resulted from any of the squad's activities, there would be a higher risk that someone would test the issue by (for example) raising the issue through the complaint process in Part 9 of the Police Act."*

In the formative stages of the Growbusters initiative, the emphasis was on community concerns about the dangers of the grow operations in the neighborhood rather than the pursuit of criminal charges. Criminal charges must clearly be contemplated in every instance when obtaining a warrant. The use of discretion regarding the recommendation of charges to Crown by the police must be carefully considered and in those instances where charges are not laid or contemplated, reasons for that decision must be placed in writing on the file. Again, no evidence could be found that the Growbusters initiative intentionally or willfully set out to violate either the terms or the spirit of the law. When they received legal counsel regarding discretion, they changed their focus to include the laying of charges. This of course became more cohesive following the Growbusters move to working with the Drug Squad, as the officers then had more expertise available for assistance.

Recommendation:

To: The Chief Constable, Vancouver Police Department

That a review be taken to ensure that policy is in place regarding appropriate documentation as it pertains to cases where warrants are executed but no charges are recommended.

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4. Issues (continued)

(d) Interdepartmental communications

During the course of this review it became clear that there were serious communication gaps within the Vancouver Police Department. Correspondence between officers and their superiors was not addressed in a manner that would give comfort to those with concerns. In some cases correspondence was not forwarded to the appropriate supervisors. As a result, those who could address the issues were not included in the communication loop. In a department as large as the Vancouver Police Department, it is often difficult to liaise with other officers and sections due to work schedules, court time, holidays and other constraints. For this reason it is imperative that a procedure be set up by senior management to address interdepartmental communication. Clearly, there were issues involving search, seizure and exhibits that were causing debate within the Drug Squad. Some of the concerns were legitimate and lead to changes in the procedures utilized by the Growbusters. While informal lines of communication may have been in place, those laid out in departmental procedures were circumvented.

Recommendation

To: The Chief Constable, Vancouver Police Department

That a review be conducted to ensure that there are formal communication procedures in place pertaining to problem solving between squads.

The Growbusters initiative affected many outside agencies and squads within the Vancouver Police Department. While meetings were held at the outset, it is obvious that not all procedures were well thought out and the initiative became an evolutionary process. While it is inevitable that a new initiative will be seen as a work in progress, it is necessary to do the proper planning. Every step of the operation must be reviewed and opinions sought from all stakeholders. Assumptions must be checked and be confirmed correct. If this is not done, perceptions of improper conduct can occur and discord will develop.

Recommendation

To: The Chief Constable, Vancouver Police Department

That policies and procedures are developed to ensure that all new initiatives within the Vancouver Police Department are thoroughly examined and all issues addressed before they become operative.

4. Issues (continued)

(e) Safety of officers

An officer expressed concerns regarding the safety of the Growbusters as they enter a residence:

> *"Another aspect that must be addressed is untrained personnel dismantling grow-ops. Patrol members at the direction of Team NCO or Car 10 are not adhering to the bulletined policy whereby the Narcotics Unit 2 is to dismantle grows. This is a major safety issue. The possibility of our members encountering a booby-trapped premise, and facing dangers from electrocution, poisoning, and exposure to hazardous chemicals, explosive chemicals, herbicides and pesticides is high. The reason for a Drug Squad Team attending these situations is to deal with all of the conditions and hazards in a safe and knowledgeable manner, and to gather evidence to support a charge. Some of the patrol NCOs are saying that they don't have the manpower to wait until the drug squad arrives, so they are sending the patrol members inside to dismantle the grows. In the patrol cases, the equipment is tagged at the property office. I realise (sic) that some of our members are home electricians, but I don't think that we should wait to find out what their skill level was in the hospital or morgue. I'm sure the WCB would not approve of having inexperienced workers at theses very hazardous job sites."*

Two issues are raised in this memo. The first deals with untrained personnel conducting searches and dismantling grow-ops. It must be assumed the writer was not referring to the Growbusters. They have the expertise to not only conduct a search but have the professional resources in the persons of City of Vancouver electrical inspectors, the Vancouver Fire Department and employees from B.C. Hydro to dismantle the grow-op in a safe and expert fashion. Certainly there are many dangers involved in conducting this type of investigation and caution should be exercised at all times to ensure the safety of everyone concerned. Booby traps, while uncommon, are a potential danger. From speaking to police officers, it would appear that the potential for violence from the occupants of the residence is on the increase. While the Growbusters practice knock and enter searches, they must constantly be alert to potential risks. Another memo lays out the protocol for when Unit 2 of the Drug Squad is to be called to a scene.

> *"Unit 2 remains committed to its mandate of taking enforcement action against Commercial Premises selling drugs and paraphernalia, and Clandestine Drug Labs. Their focus (aside from what I have just described) relative to the Marihuana Grow Operations will primarily involve Organized Crime Groups, recidivist offenders and attending the scene of Grow-ops when directed by the Duty Officer."*

It would appear from the foregoing that the Growbusters will be the unit tasked with the initial search and seizure of a residence with Unit 2 of the Drug Squad acting in an assist capacity.

The other issue is the dismantling of grow-ops by police officers with no training. This is clearly a dangerous situation and one that should be discouraged at all times.

No Recommendations

Covered under Issue 4(f)

4. Issues (continued)

(f) Environmental Concerns

Also mentioned in the media articles and the memo in Appendix 4 are concerns about environmental safety:

> *"In the Grow Busters (sic) cases the chemicals are being dumped out, mixed, and in some cases being dumped down the toilet. This is a huge environmental issue with the dumping of poisons, pesticides, fertilizers, fungicides, nitrates and pH adjusters in the water and eco-system. One of the main concerns of the community is environmental and safety hazards posed by the marihuana production. Ironically, by improper disposal of chemicals and equipment by our members, their actions are potentially creating the same hazards that the citizens are fearing. One cannot plead ignorance when there are trained personnel available to deal with these situations."*

There are two issues to be considered. As reported in the memo, there was one confirmed dumping of fertilizer down a toilet. This took place early in the Growbusters process and resulted from a spill at a residence. This was brought to the attention of the supervisor, and directives were issued whereby all chemicals used in grow operations were left intact or if considered dangerous, taken by the fire department. The review failed to ascertain any other instances where there were any environmental concerns, nor is there evidence of careless or reckless handling of poisons, pesticides, fertilizers, fungicides, nitrates or pH adjusters.

The second issue deals with the availability of trained personnel to handle these situations. Due to operational contingencies, the Drug Squad is not always available to assist either the Growbusters or uniformed squads in the taking down of these residences. If the Drug Squad is to be tasked but cannot attend, then contingency plans must be put in place.

Recommendation

To: The Chief Constable, Vancouver Police Department

That the Vancouver Police Department examine its policy re: availability or designation of trained personnel to assist in the take down of grow operations.

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5. Summary

The Growbusters initiative was an evolutionary process both from a legal and enforcement perspective. There was no other similar initiative anywhere in Canada and perhaps North America. While some of the early decisions relating to seizure and destruction of exhibits could have been more reasoned, there is no evidence of willful or wanton destruction of property. This initiative is an example of the steps that can be taken to address the concerns of a community. It demonstrates how a multi-disciplinary team can work together in a cohesive and efficient manner. Despite some difficulties in making this initiative a success many lessons were learned by all concerned. If implemented the recommendations contained in this review would ensure that these same issues are not repeated in future community based initiatives.